

REMARKS

Applicants respectfully request reconsideration of the instant application in the view of the foregoing amendments and the following remarks. Claims 31, 38-41, 55, 61, 65-68 are currently pending in the instant application. Claims 31 and 55 are independent. Claims 31, 55 are currently amended by this submission. Applicants submit that support for the Amendment may be found throughout the specification and originally-filed claims, and that no new matter has been added.

Rejection Under 35 USC § 103

Claims 31, 38-41, 55, 61, 65-68 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over McCall et al. US Patent No. 6,321,984 (hereafter "McCall"), in view of US Patent Application No. 20020007318 (hereinafter "Alnwick") and further in view of "Weather futures bet will give Tucson firms a hedge against loss," Arizona Daily Star, Tucson, Arizona, 5 February 1999 (hereafter "Weather Futures"). Applicants respectfully disagree. Applicants reassert previous arguments, and in addition add what follows.

[0001] With regard to claims 31, 38-41, 55, 61, 65-68, the Examiner alleges that McCall "discloses a system and method for selling vehicle fuel to customers" (8/10/07 Office Action, page 2). Applicants respectfully disagree with Examiner's characterization of McCall and employment of impermissible hindsight.

[0002] Applicant does not agree with many of Examiner's assessments, but it is not clear to which elements of the claims the Examiner directed arguments. The Examiner did not simply put forth each claim element with relevant teachings/citation, as such, Applicant is not sure exactly what arguments apply to what claim elements as put forth particularly in pages 2-4 of the Examiner Office Action. It would be appreciated if the Examiner can more particularly point out

to which claim elements Examiner arguments and reference cites apply by simply first quoting the claim element and then providing Examiner argument. That being said, Applicant responds to the Examiner arguments, as best understood, as follows:

McCall and none of the other references (i.e., Alnwick and Weather Futures), all do not include the claim element of “calculating a **guaranteed program price** for a type of vehicle fuel, using customer usage data and said finder's fee amount of said program sponsor data, wherein said customer usage data includes a quantity of fuel to be purchased and a number of months during which the guaranteed program price will apply for the type of fuel to be purchased.” (emphasis added). Applicant did not see any mention of this element in the Examiner’s office action or the cited references.

Furthermore, none of the references include the claim element of “querying a database for program sponsor data associated with the customer usage data.”

As these elements are missing from all the references, for at least these reasons, it is believed that the presented claims (and claims depending therefrom) are novel over all the cited references and are in a condition for allowance. Applicant believes similar reasoning applies to overcome the Examiner’s remaining objections, and therefore all claims overcome all Examiner objections and/or rejections, are in a condition for allowance.

Finally, it is believed that the Examiner is mistaken with regard to assertions regarding 37 CFR 1.111 and acquiescence on the merits. Respectfully, Examiner’s read would necessitate that Applicant correct every typo made by Examiner (as for example found in Examiner’s Office Action of August 10, 2007 on page 2, last line “it’s (sic) customers”) or

otherwise Applicant has somehow acceded, acquiesced to and/or otherwise agreed to the Examiner's mistakes. Just because an Examiner may put forth a misspelling that was not pointed out by the Applicant does not mean that the misspelling is now deemed to be correct usage. Similarly, when Applicant puts forth a "bona fide" attempt to advance the application and point out errors in the Examiner's action by "distinctly and specifically" responding to every ground of rejection and/or objection, it is enough to respond to the grounds (i.e., 35 U.S.C. 101, 102, 103, 112, etc.) by pointing out specific distinctions believed to render the claims patentable over the references; i.e., sufficient to overcome each of the grounds for rejection. (See 37 CFR 1.111(b)). Thus, although there may be numerous mistaken assertions made regarding a single ground for rejection, if an Applicant can present a bona fide argument that overcomes the grounds for rejection by tackling a single mistaken assertion, such argument is sufficient, without more, and does not mean any acquiescence has taken place. As such, Applicant maintains that no such acquiescence on the merits or otherwise has taken place and hopes that both Applicant and the Examiner can move forward with prosecution of the application on the merits.

Consequently, the reference(s) cited by the office action do not result in the claimed invention, there was/is no reason, rationale or motivation (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)) for such a combination of references, and the claimed inventions are not admitted to be prior art. Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 31, 38-41, 55, 61, 65-68, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims

over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed here or in previous amendments/responses, Applicant asserts that all such remaining and not discussed claim elements, all, also are distinguished over the prior art and reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicant respectfully requests allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17209-075.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is

hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17209-075

Respectfully submitted,
CHADBOURNE & PARKE, L.L.P.

Dated: October 31, 2007

By: /Walter G. Hanchuk/
Walter G. Hanchuk Reg. No. 35,179

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112
212-408-5100 Telephone
212-541-5369 Facsimile